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HEARINGS ON THE OIL EMBARGO AGAINST SOUTH AFRICA (New York, 15 August 1991)

[Note: **This issue contains excerpts from statements made during the Hearings on the Oil Embargo against South Africa, organized by the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa, in New York on 15 August 1991.**

The views expressed are those of the authors.]

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MR. ANTHONY B. NYAKI (UNITED REPUBLIC OF TANZANIA), CHAIRMAN OF THE INTERGOVERNMENTAL GROUP TO MONITOR THE SUPPLY AND SHIPPING OF OIL AND PETROLEUM PRODUCTS TO SOUTH AFRICA

We are focusing today, as we have always done, on the best way to assist the people of South Africa to achieve their freedom. Our guiding principles are contained in the Declaration on Apartheid and its Destructive Consequences in Southern Africa adopted by consensus by the General Assembly at its sixteenth special session in 1989, as well as in the relevant General Assembly and Security Council resolutions.

To the two best-known preconditions, i.e., the release of all political prisoners and the unconditional return of all exiles, must be added the failure to repeal all oppressive and restrictive security laws. The outbreak of violence and disclosures implicating the regime and its security forces in instigating and abetting it is another serious obstacle preventing the establishment of conditions necessary for genuine negotiations.

The embarrassing disclosures of the complicity of the regime in the violence are a vindication of the call for the establishment of appropriate interim arrangements to manage the period of transition. Such transitional arrangements will provide not only a healthy atmosphere for negotiations, they will also ensure the speedy adoption of a new democratic and non-racial constitution for South Africa.

Notwithstanding the decisions of the United States administration and the European Community to lift their embargoes, the Intergovernmental Group believes that the oil embargo, along with the arms embargo, can be lifted only after a new democratic and non-racial constitution has been adopted in South Africa.

A major part of the work of the Group has been to investigate cases of alleged violations of the oil embargo. Since 1989, the Group has initiated a survey of calls at South African ports by ships capable of carrying oil and petroleum products.

Acting on the recommendations of the Panel on the Hearings of the Oil Embargo against South Africa which were conducted in 1989, the Intergovernmental Group sought the expertise of legal experts to help formulate the basic principles of a model law for the effective enforcement of the oil embargo against South Africa. The Model Law prohibits the sale of oil and petroleum products to South Africa, including the invalidation of contracts for sale, makes provision for compliance or enforcement and provides for penalties for violations. There is no doubt that the adoption of the general principles contained in the Model Law will strengthen the enforcement mechanism of States individually and provide a basis for cooperation among them collectively and bilaterally.

READEX FICHE

The oil embargo, we believe, is an important component of the leverage that the international community has on the regime. It should be retained and applied until a new, democratic and non-racial constitution has been agreed upon in South Africa.

Therefore, we call upon the international community to go the extra mile by maintaining pressure on the regime and reaffirming its support for the Black majority in South Africa. We also call for increased assistance to the disadvantaged and dispossessed majority in South Africa and their liberation movements and all anti-apartheid forces in the country.

PROFESSOR IBRAHIM A. GAMBARI (NIGERIA),
CHAIRMAN OF THE SPECIAL COMMITTEE AGAINST APARTHEID

These hearings are not only timely, they are also essential to clarify the position of our two bodies which are entrusted by the General Assembly with the question of sanctions and, particularly, the oil embargo against South Africa.

The Special Committee, considering the importance of the oil embargo against South Africa, which is an essential part of the sanctions measures called for by the General Assembly and complementary to the arms embargo since oil is considered an ammunition of war, exerted tremendous efforts that led the Assembly to adopt resolution 41/35 F of 10 November 1986 by which it established the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa.

We expect that since the Declaration on Apartheid and its Destructive Consequences in Southern Africa was adopted by consensus, its provisions would not be disregarded by individual States. Therefore, we consider that the premature lifting of certain important sanctions by some Governments as a counter-productive move that does not help the peaceful process in South Africa. The recent revelations of covert funding of organizations by Pretoria shows once more that there is need for caution, a need for maintaining the pressure on the authorities until a new constitution is adopted. Unfortunately, neither have negotiations started, nor has an agreement been reached on transitional arrangements or on the mechanisms for drawing up a new constitution.

At this stage, it is imperative that Pretoria release swiftly all political prisoners and permit the return of exiles without restrictions. Effective and impartial measures to end the persistent violence is another step that Pretoria must urgently take.

We believe that the oil embargo is, at this stage, a necessary ingredient of the pressure that should be exercised on Pretoria, and therefore should be maintained. We call upon all the States and organizations to cooperate with the Special Committee and the

Intergovernmental Group to enforce these embargoes and other sanctions. Pressure on Pretoria combined with assistance to the anti-apartheid forces and the disadvantaged section of the society is the two-track policy that the Special Committee is espousing at this juncture. This strategy is based on the consensus Declaration and will ensure a speedy and peaceful eradication of apartheid and the establishment of a free and democratic South Africa.

MR. GODWIN MUTALE S. MFULA, ON BEHALF OF THE CHAIRMAN OF THE FRONT-LINE STATES

These hearings are taking place in the aftermath of some decisions taken by a number of countries to lift some sanctions which were imposed against South Africa in order to bring about an end to the obnoxious system of apartheid. We consider it important that the hearings are taking place now before these unfortunate and premature decisions produce a domino effect. The process of change in South Africa is not irreversible. The Black majority in South Africa continues to suffer unbearable anguish and injustice under the apartheid system, despite the repeal of the Group Areas Act, the Population Registration Act and other acts. The South African Black majority continues to live in the same conditions of abject poverty and landlessness. They have no voice in the affairs of the country.

It is undeniable that sanctions imposed against South Africa and the oil embargo in particular have, over the years, played a significant role to bring the situation in South Africa to the present stage. In this regard, it is without a doubt that sanctions are still necessary in order to compel the regime to end apartheid and to establish a united, non-racial, democratic South Africa. We commend those countries which have not yet lifted sanctions against South Africa, and urge them not to do so until the attainment of irreversible change as stipulated in the Declaration on Apartheid and its Destructive Consequences in Southern Africa. On behalf of the Chairman of the Front-line States, I wish to urge strongly that the oil embargo against South Africa, which has proved to be so effective, be maintained until there is genuine change in South Africa.

MR. SOLOMON GOMEZ, REPRESENTATIVE OF THE ORGANIZATION OF AFRICAN UNITY

When the Organization of African Unity (OAU) called for the imposition of sanctions against apartheid South African in 1963, it had one purpose - the elimination of apartheid and an end to racist minority rule in that country.

If OAU persists today in its call for sanctions to be maintained against South Africa, it is because the apartheid system is still in place.

The unilateral lifting of sanctions on the part of some Western Governments gives OAU cause for concern. The unilateral lifting of sanctions was not only premature, but constituted a serious violation of the United Nations consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa.

The international community does not have to look far to note that the preconditions and statement of principles set out in the Harare Declaration, the Groote Schurr and Pretoria Minutes, and of the Commonwealth Heads of State meeting at Kuala Lumpur have not yet been fully met.

It is in recognition of this fact that OAU has reaffirmed the decisive importance of sanctions as a necessary mechanism that will move South Africa forward towards a non-racial democracy.

It is the position of OAU that, should the South African Government adopt measures which lead to positive, profound and irreversible change towards the abolition of apartheid, it will review the question of sanctions as well as the readmittance of South Africa into the international community.

SISTER BETSY CLARK, INTERFAITH CENTER ON CORPORATE RESPONSIBILITY

The fact-finding delegation of the Interfaith Center on Corporate Responsibility (ICCR) to South Africa found that although Pretoria has delivered some welcomed reforms, these changes are in no sense irreversible. Sustained international pressures, like the oil embargo, are necessary to guarantee that the process does not grind to a halt before completion.

The ICCR delegation to South Africa found that the Declaration on Apartheid and its Destructive Consequences in Southern Africa, issued in 1989 and reaffirmed in December 1990, is as relevant now as it was then, since apartheid is still firmly in place. Hundreds of political prisoners remain in South Africa. In June, the African National Congress of South Africa (ANC) and the de Klerk Government agreed that there were over 980 political prisoners, including more than 100 in the "homelands" alone.

We also found that procedures purportedly designed to facilitate the return of exiles have fallen far short of their stated objective. Human rights workers estimate that 40,000 people remain in exile. The delegation further found that President de Klerk's legislated reforms had failed to dismantle the complex structure of discriminatory laws. The repeal of the Population Registration Act applies only to children born after 10 June 1991. The lifting

of the Group Areas Act did little to redefine residency or redistribute racially and economically discriminatory access to housing.

The most serious indictment of Pretoria's integrity and intentions to abolish White minority rule is the epidemic of State-supported violence, which has claimed an estimated 5,000 lives since 1987.

The oil embargo upheld by the work of the Intergovernmental Group is a key pressure on Pretoria. Despite its numerous loopholes, voluntary nature and uneven enforcement, it remains one of the most effective measures to raise the cost of apartheid and press for its genuine abolition.

As South African economists, unions, democratic and liberation movements seek ways to promote responsible corporate behavior and reinvestment in the future, they encounter resistance from many oil companies operating in the country. Not one of the oil companies operating in the country has heeded the call of apartheid South Africa's international opponents to refuse to comply with the country's strategic supply laws. They continue to pay low wages and pursue anti-union practices.

The oil embargo reaffirmed by the United Nations and strengthened and enforced by its member States must continue to send a strong signal to these companies that they are responsible to the people of South Africa and the international community.

MR. RICHARD HENGEVELD, SHIPPING RESEARCH BUREAU

On 10 July 1991, the United States of America became the first country in the world to lift its oil embargo. On 14 July 1991, the Government of Israel followed suit and canceled its boycott measures of 16 September 1987. Their change of policy will not alter the fact that still every load of crude oil reaching South Africa does so in contravention of oil embargoes. Trade embargoes being called into question and even being lifted in other places as well since 1990 have had no bearing on the oil embargo.

The "lifting" of sanctions by the European Community (EC) have left the limited EC oil embargo intact. The Foreign Ministers of the Nordic countries considered the issue, and concluded that time had not yet come, which leaves their exemplary legal bans on crude transports to South Africa in force unscathed. In the United States, the lifting of the federal sanctions law leaves in place sanctions imposed by numerous States, counties and cities. Previous hopes entertained at the Commonwealth Secretariat that the repeal of the oil embargo could be endorsed at the Commonwealth Conference at Harare in October 1991 have now disappeared. OAU met in Nigeria in late July to discuss the possible relaxation of the oil embargo and other sanctions. Any steps in that direction and attempts by South

Africa to forge bilateral oil links with West African States also appear to have been checked. Today's meeting is sufficient proof that the United Nations shows no sign of abandoning the oil embargo.

The success of the oil embargo is not to be measured against the criterion that it should have been able to shut off South Africa from all external oil supplies. The success of the oil embargo is that it has imposed massive costs on the South African economy and raised some public questioning as to whether the costs of maintaining apartheid were too high. Our conservative estimate says that South Africa has had to spend between US$25 billion and US$30 billion over the last 12 years to overcome the direct and indirect effects of the oil embargo.

Lifting the oil embargo now would be another step in taking pressure off the South African Government. At present, the embargo should continue to contribute to the cost for the South African Government of obstructing the process towards the definitive dismantling of apartheid and towards full democratization.

A number of recent developments have raised the question of whether South Africa is already regaining normalized relations with the outside world in the field of oil now. Domestic demand in South Africa for fuel has been growing steadily. In recent months, all four South African oil refineries have announced expansion and upgrading plans, apparently prompted by the growth in demand that can no longer be accounted for by synthetic fuel production. They are also made in anticipation of the embargo being eventually lifted, which would bring about a freer access to the world oil market and more opportunities for exporting oil products into the region.

The plans cannot be seen as signs that the refineries are already now regaining free access to the international crude oil market. Even the oil companies themselves are working on the assumption that oil embargoes will be the last trade bans to go.

Secondly, a matter of some concern are reports on a quick normalization of relations between South Africa and a range of oil-producing countries in Africa. Talks between those countries and South African delegations have been going on for some time and are aimed at laying a framework for future oil cooperation, but in some cases already far-going steps seem to have been taken. For those who are in favour of a "carrot and stick" policy with regard to the oil embargo, this could be their perfect carrot: much-wanted oil supplies from West Africa should only be made available to a post-apartheid South Africa.

The third and last issue is related to the strategic stockpile. As is known, South Africa keeps a relatively large stockpile of oil. Having to keep a stockpile of such dimensions imposes a burden on the economy.

Directly linked to hopes for a future without an oil embargo was a decision to lower the stockpile to raise up to R 2 billion for economic stimulation and job creation. Bidding for the oil is believed to be restricted to domestic buyers, as the operation is aimed at releasing money while saving foreign exchange by slowing down oil imports. It has been reported, however, that the Government's acute need for foreign currency has led it to sell to foreign buyers as well. Although the South African Government likes to create the impression that the decision concerning the stockpile sale is a consequence of improving relations, it is as much prompted by financial necessities. The oil embargo is still being felt, and the stockpile, even if somewhat decreased in volume, will still be there.

Repeated hikes in petrol prices and the subsequent escalatory effects on other prices have often been criticized within South Africa as part of the economic burden that apartheid has had to carry as a result of sanctions.

MR. WELLINGTON W. NYANGONI, AFRICAN AND AFRO-AMERICAN STUDIES, BRANDEIS UNIVERSITY

While I join many people in welcoming the changes in South Africa as important and a step in the right direction, I contend that lifting economic sanctions against South Africa at this time is not only imprudent and premature, but it sends a wrong signal to that Government.

The repeal of the so-called cornerstones of apartheid are indeed a big "hoax". The repeal of the Population Registration Act is only partial - it will remain in force until the 1983 Constitution is repealed. Under the 1983 Constitution, Africans do not have the right to vote or stand for election in South Africa. They are denied political and economic rights enjoyed by Whites. Economic rights denied to Africans include the right to buy houses, land or to live in White suburbs. Educational schools are still segregated. The 1983 Constitution does not allow Africans to be citizens of South Africa. In addition, the laws that were repealed exclude the Bantustan or Homeland Acts and the Bantu Education Act. As a matter of fact, Africans now have the same rights as they had before the National Party came to power in 1948. What is at issue here is not whether changes have taken place but whether these changes go far enough.

Recent events have shown that President de Klerk and his security forces have not abandoned their policies of brutal treatment of African people and ANC. Some of the government officials admitted that they provided weapons and transportation to Inkatha. Why should these wicked and dastardly acts be rewarded by the removal of sanctions by the United Nations - especially against oil? What we are saying to the United Nations is that it is premature to lift oil sanctions against South Africa.

In her study, Jannie Hofmyer noted that 48 per cent of Whites believe that it is sensible to seek compromise with the advocates of sanctions. By providing economic aid to some African countries, South Africa would argue that it is a bastion of economic development in the region. In support of this policy, the South African Government claims that it is providing economic aid to 23 African countries. While it is difficult to verify whether this information is true or not, what is clear is that some African countries are alleged to be violating United Nations oil sanctions against South Africa. What is at issue here is that in addition to oil being a military weapon, it is the indispensable ingredient essential for the viable operation of the South African armed forces. Oil is an instrument for preserving apartheid and killing thousands of Africans.

Reports on the increasing contacts between South Africa and a number of oil producing countries have been mounting. African countries are not alone in violating oil sanctions against South Africa. The United States of America was one of the first countries to announce its intention to amend the oil embargo legislation. On 14 July 1991, Israel lifted its oil embargo against South Africa. The United Kingdom guidelines, which state that British North Sea oil may be sold to countries that are members of the International Energy Agency was lifted on 8 March 1991. In addition to these violators of the United Nations oil embargo are many transnational corporations and shipping companies.

There are many voices saying that the oil embargo should be removed because it is not working and that sufficient reform has taken place. Some people are saying that the de Klerk Government should be rewarded for the repeal of the Group Areas Act, the Land Acts, the Population Registration Act and other discriminatory laws.

What we are saying is that the political changes that have been made do not go far enough. Oil sanctions remain the only major weapon to induce political change in the country. The only way sanctions can work is for all the countries that are violating them to adopt a rigorous programme for enforcement. What this organization should do is to continue enforcing the oil embargo and to give additional monitoring responsibilities to the Special Committee against Apartheid and the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa.

PROFESSOR RICHARD LILLICH, *
UNIVERSITY OF VIRGINIA SCHOOL OF LAW

What is the importance of a model law for the more effective enforcement of a voluntary oil embargo, at the same time that political decisions are being taken by the

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* "Model Law on the Oil Embargo against South Africa", Notes and Documents,No. 10/91.

European Community, by the United States and by several other States that obviously undermine the thrust of the activities of the Intergovernmental Group?

First of all, contrary to the popular wisdom that one hears so frequently that sanctions do not work, sanctions can work. That oil sanctions have been effective, despite the fact that they have been voluntary and not mandatory, is obvious from the record. They have contributed to the changes in South Africa's conduct in the past year. South Africa itself, by its acts and by its recent words, has acknowledged the same.

Indeed the economic costs that have been added to the South African economy obviously have affected South African behaviour, and the fact that this embargo stigmatizes South Africa as a massive violator of human rights and therefore adds a political cost as well as an economic cost is important as well.

Sanctions, while they may be effective, can be made much more effective if their enforcement is carried out seriously. It involves, first, substantive law being in place, and this means voluntarily adopted laws by nation States; and it also involves the enforcement of this substantive law to make sure that it is carried out on the domestic level. The report I wrote for you last year indicates that on both the substantive side and especially the enforcement side, States Members of the United Nations that orally commit themselves to this voluntary oil embargo, have not always carried out, to the extent that is desirable, the obligation that they have voluntarily assumed.

It is very important that the Intergovernmental Group continue to monitor whether States have adopted legislation for the effective enforcement of the oil embargo. I would invite you in your next report to request States to report on what legislation they have adopted in response to your request. Secondly, it is important for the Intergovernmental Group to name States and identify private parties that are violators of this voluntary oil embargo. Lastly, it is very important that you avoid what might be thought of as the marginalization of the Intergovernmental Group because of what is perceived in some quarters as substantial developments in South Africa. Your mandate from the General Assembly is that this oil embargo is needed until a framework for the adoption of a democratic regime in South Africa is irreversibly in place.

Sanctions have had an impact on South Africa. The oil embargo in particular has had an impact on South Africa.